APPENDIX A

Filed. Aug. 16, 1961. Carl W. Reuss, Clerk

No. 14533

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ARTHUR J. GOLDBERG, Secretary of Labor, United States Department of Labor, *Petitioner-Appellant*,

v.

TRUCK DRIVERS LOCAL UNION NO. 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, and GENERAL DRIVERS, WAREHOUSEMEN, HELPERS, AND GAS STATION ATTENDANTS LOCAL UNION NO. 614, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, *Respondents-Appellees*.

On Appeal from the United States District Court for the Eastern District of Michigan, Southern Division.

Decided August 16, 1961.

Before: CECIL, WEICK and O'SULLIVAN, Circuit Judges.

WEICK, Circuit Judge. This case involves important questions concerning the right of the Secretary of Labor to secure judicial enforcement of subpoenas duces tecum issued by him and served on union officers in connection with an investigation he was attempting to make under the authority of Section 601 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U. S. C. (Supp. I) 521.

The union officers appeared in response to the subpoenas, challenged the right of the Secretary to make the investigation and refused to produce the records called for in view

of legal questions which the unions and their counsel believed were involved including the constitutionality of certain sections of the Act providing for the issuance of the subpoenas. The union officers had custody of the records subpoenaed and there was no claim of any physical inability on their part to produce them.

The Secretary filed a petition in the District Court for enforcement of the subpoenas, which was denied on the ground that the Secretary had made no showing as to necessity for the investigation and because the subpoenas were too broad.

It appeared on the face of the subpoenas that they were issued in connection with "an investigation by the Bureau of Labor-Management Reports [1] involving a determination whether any person has violated any provision of the Act." The subpoenas called for the production of the following records:

> All records for the period from January 1, 1959 to the present date maintained by you or under your control which contain any basic information or data on matters required to be reported from which the organizational report (Form LM-1), and the financial report (Form LM-2) filed with the Secretary of Labor for Local 614, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America may be verified, explained or clarified and checked for accuracy and completeness, in connection with all items referred to or listed in such report and all items omitted or excluded therefrom which are relevant thereto and are required to be included in said reports, such records to include but not be limited to, vouchers, worksheets, ledgers, audit reports, records of receipt of dues, fees, assessments, fines and work permits, accounts receivable, accounts payable, journals, journal vouchers, check register, payroll register and related records, and all books of accounts of Local 614,

[1] The Bureau was the duly authorized representative of the Secretary.

> related to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or other local unions affiliated with said International, including all bank statements, cancelled checks, check stubs, audit reports, financial reports, records of loans, records of mortgages, records of ownership of property real and personal, deeds, records of trusts, records of investments, and all correspondence and memoranda pertaining to receipts and disbursements.[2]

No evidence was offered in the District Court. The record consisted of the petition for enforcement, the exhibits attached thereto and the unions' response which admitted the allegations of Paragraphs I to XI of said petition.

In the District Court, the unions contended that it was obligatory on the part of the Secretary to first establish probable cause for the investigation as a condition precedent to obtaining enforcement of the subpoenas by the court.

The District Court, in its opinion denying enforcement, did not expressly use the term "probable cause," but adopted words of like import which imposed a requirement at least as stringent, namely, that the Secretary establish a basis for the investigation. The court said that there must be some "reasonable foundation or valid purpose" rather than merely looking into the records of the union in the hope of turning up something. This, in effect, was a holding that the Secretary had no right merely to investigate, but was required first to establish a probable violation of the Act.

In this Court, the unions contended that as a prerequisite to judicial enforcement of a subpoena duces tecum the Secretary "must show that he has a reasonable belief of necessity [i.e., a reasonable basis] for the investigation."

The statute required the unions to maintain the records which were subpoenaed. It provided:

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[2] The subpoena for Local 610 was identical except for the name of the union and the date of appearance.

Every person required to file any report under this subchapter shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain. (29 U. S. C. § 436)

Power was granted to the Secretary to make an investigation by the following language:

INVESTIGATIONS BY SECRETARY; APPLICABILITY OF OTHER LAWS

(a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this chapter (except subchapter II of this chapter) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this chapter and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

(b) For the purpose of any investigation provided for in this chapter, the provisions of sections 49 and 50 of Title 15 (relating to the attendance of witnesses and the production of books, papers, and documents) are made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him. [29 U. S. C. § 521(a)(b).]

The pertinent provisions of Section 9 and Section 10 of the Federal Trade Commission Act which were made applicable are set forth in footnote 3.

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[3] Section 9 of the Federal Trade Commission Act (15 U. S. C. 49) provides in pertinent part as follows:

DOCUMENTARY EVIDENCE; DEPOSITIONS; WITNESSES

For the purposes of sections 41-46 and 47-58 of this title the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examinations, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas and members and examiners of the commission may adinister oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

* * * * * *

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty

or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: PROVIDED, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Section 10 of the Federal Trade Commission Act (15 U. S. C. 50) provides in pertinent part as follows:

OFFENSES AND PENALTIES

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made any false entry or statement of fact in any report required to be made under section 41-46 and 47-58 of this title, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to said sections, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment. [29 U. S. C. § 521(a)(b).]

* * * * * *

The legislative history of the Labor-Management Reporting and Disclosure Act reveals that the original bills introduced in the House[4] and Senate[5] each granted power to the Secretary to make an investigation ony when he had probable cause to believe that any person or labor organization had violated any provision of the Act. The probable cause requirement, however, was eliminated from the Act as it was finally passed. The reason for deleting the probable cause requirement is set forth in the minority amendments adopted by the Senate Committee on Labor and Public Welfare. It is as follows:

> Section 106(*c*): The Secretary shall have the power and is directed when he believes it necessary in order to determine whether anyone has violated or is about to violate a provision of this bill to make investigations.
>
> As originally worded, this section would have given the Secretary the authority to investigate the books and records of persons reporting under the act only when he had probable cause to believe that a person had violated provisions of the act. On the surface, the term 'probable cause' would appear to give the Secretary all the investigatory power that he needed. But the words 'probable cause' would throw a monkey wrench in the Secretary's investigatory machinery. Probable cause means more than mere suspicion that the act has been violated. To have probable cause, a person must have such evidence as would lead the ordinary prudent man to believe that the act has been violated. Consequently, every time he commenced an

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[4] Section 601(a) of H. R. 8400, 86th Cong., 1st Session, known as Landrum-Griffin bill. The number of the bill which finally was passed by the House was H. R. 8342 in which the text of H. R. 8400 had been substituted.

[5] Section 106(c) of S. 505, 86th Cong., 1st Session, known as the Kennedy-Ervin bill. S. 1555 which incorporated a number of committee amendments to S. 505 was introduced by Senator Kennedy and referred to the Committee on Labor and Public Welfare.

investigation the Secretary could be dragged into court until the question of probable cause had been decided. Under nearly every statute requiring the filing of reports, such as the Internal Revenue Act and the Fair Labor Standards Act, the Administrator can conduct 'spot check' investigations unhampered by the 'probable cause' requirement. Our amendment rewrites this section to give the Secretary investigatory power when he believes it necessary in order to determine whether a violation has occurred or is about to occur. (U. S. Code Congressional & Administrative News—86th Congress, 1st Session 1959 pp. 2395, 2396)

After the bill had passed the Senate, it was sent to a Conference Committee which reported:

SECTION 601—INVESTIGATIONS

The Senate bill contains a provision which directs the Secretary to conduct an investigation when he believes it necessary in order to determine whether any person has, or is about to, violate the act, or any rule or regulation authorized by the act.

The House amendment directs the Secretary to make an investigation when he has probable cause to believe that any person has violated a provision of the act, other than title I.

The conference substitute is similar to the Senate bill, except that the investigation authority is permissive rather than mandatory, no investigation may be made with respect to violations of rules and regulations, and the investigation authority does not extend to title I.

The Senate bill also contains a provision authorizing the Secretary to report to interested persons concerning the facts required to be shown in reports and concerning the reasons for failure or refusal to file a report or any other matter he deems appropriate as a result of an investigation. The conference substitute adopts this provision. (U. S. Code Congressional & Administrative News—86th Congress, 1st Session 1959 p. 2508)

The legislative history of the Act is clear that Congress rejected the "probable cause" requirement because it might hamper the Secretary in the performance of his duties with respect to investigation which were imposed upon him by the Act. With such a requirement, each investigation would likely be met by a lawsuit in which the Secretary would be obliged to prove a probable violation of the Act or enforcement of subpoenas would be denied. Even if successful in his proof, the investigation by the Secretary might be delayed for months or years while the matter was being litigated in the courts. It seems to us that the court ought not to impose a condition, which Congress rejected, on the exercise of the right of the Secretary to investigate. Nor do we see any real difference between the rejected "probable cause" requirement and that of a "reasonable basis" for the investigation adopted by the District Court. While the disclosure sought must not be unreasonable or oppressive (*Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186, 208), this does not mean that the Secretary is obligated to establish a reasonable basis for his investigation. If the Secretary was in possession of facts establishing a probable violation he might never need to investigate. The purpose of the investigation authorized by Congress was to provide the means of discovery whereby the Secretary could determine whether the Act was being violated, or about to be violated.

All the statute required, in order for the Secretary to investigate, was that he "believe it necessary in order to determine whether any person has violated or is about to violate any provision of this chapter."

In his petition for enforcement filed in the District Court, the Secretary alleged in paragraph six that he believed it was necessary to make the investigation to determine whether any persons violated or were about to violate the law. The unions in their response to the petition (Par. 1) admitted the allegations contained in paragraph six and certain other paragraphs of the petition.

In the absence of proof to the contrary, there is a presumption of regularity in the proceedings of a public officer. The burden is upon the party complaining to show otherwise. Cf. *Fahey* v. *Mallonee*, 332 U. S. 245, 254; *Mississippi Road Supply Co.* v. *Walling*, 136 F. 2d 391, 394 (CA 5); 42 Am. Jur. § 240 p. 680. The trial judge commented on the fact that the Secretary did not offer any evidence to establish the reason or basis for the investigation. In our opinion, the Secretary was not required to do so. The statute was sufficient authority for him to proceed. The purpose of the investigation appeared on the face of the subpoenas. The Secretary could not very well perform his statutory duty and determine whether the Act was being violated or about to be violated without making an investigation. Requiring the Secretary to first establish a probable violation of the Act, as a condition precedent to making an investigation, effectively stripped him of his power to investigate and prevented him from determining whether the Act was being violated or about to be violated. It virtually rendered the enforcement provisions of the Act nugatory.

We believe *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186 is dispositive of this issue. In upholding enforcement of a subpoena duces tecum issued by the Administrator of the Wage and Hour Division of the Department of Labor, the Court said:

> Congress has made no requirement in terms of any showing of 'probable cause'; and, in view of what has already been said, any possible constitutional requirement of that sort was satisfied by the Administrator's showing in this case, including not only the allegations concerning coverage, but also that he was proceeding with his investigation in accordance with the mandate of Congress and that the records sought were relevant to that purpose. . . .
>
> The result therefore sustains the Administrator's position that his investigative function, in searching out violations with a view to securing enforcement of

> the Act, is essentially the same as the grand jury's, or the court's in issuing other pretrial orders for the discovery of evidence, and is governed by the same limitations. These are that he shall not act arbitrarily or in excess of his statutory authority, but this does not mean that his inquiry must be 'limited . . . by forecasts of the probable result of the investigation . . .' *Blair* v. *United States*, 250 U. S. 273, 282; cf. *Hale* v. *Henkel*, 201 U. S. 43. Nor is the judicial function either abused or abased, as has been suggested, by leaving to it the determination of the important questions which the Administrator's position concedes the courts may decide.

The Court was cognizant of contentions which would block an investigation at the very threshold of the inquiry stating:

> On the other hand, petitioners' view, if accepted, would stop much if not all of investigation in the public interest at the threshold of inquiry and, in the case of the Administrator, is designed avowedly to do so. This would render substantially impossible his effective discharge of the duties of investigation and enforcement which Congress has placed upon him. And if his functions could be thus blocked, so might many others of equal importance.

In *United States* v. *Morton Salt Co.*, 338 U. S. 632, the Court followed *Oklahoma Press* and said with respect to the grounds for an investigation:

> Even if one were to regard the request for information in this case as caused by nothing more than official curiosity, nevertheless law-enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and the public interest.

See also: *Federal Trade Commission* v. *Crafts*, 355 U. S. 9; *Endicott Johnson Corp.* v. *Perkins*, 317 U. S. 501; *Hunt Food & Industries, Inc.* v. *Federal Trade Commission*, 286 F. 2d 803 (CA 9) cert. denied 365 U. S. 877; *Provenzano*

v. *Porter*, 159 F. 2d 47 (CA 9) cert. denied 331 U. S. 816; *Walling* v. *La Belle S.S. Co.*, 148 F. 2d 198 (CA 6); *Fleming* v. *Montgomery Ward & Co.*, 114 F. 2d 384 (CA 7).

In *Chapman* v. *Maren Elwood College*, 225 F. 2d 230 (CA 9), relied on by appellees, the court denied enforcement of a subpoena duces tecum issued by the Veterans Administration on the ground that it had been issued for an improper purpose and, was therefore unreasonable. The purpose of the investigation in that case was to compel the college to agree to a ten percent projection demand. Affidavits proving this contention were offered in evidence by the college and were not rebutted by the Veterans Administration. No proof was offered by the unions in the present case that the subpoenas were issued for any improper purpose.

The District Court relied on *Federal Trade Commission* v. *American Tobacco Co.*, 264 U. S. 298 but as we pointed out in *Walling* v. *La Belle S.S. Co.*, 148 F. 2d 198 (CA 6), the Federal Trade Commission did not possess power of inspection such as was granted by Congress to the Wage and Hour Administrator under Section 11(a) of the Fair Labor Standards Act. The Secretary here has the same power as the Administrator. The later decisions of the Supreme Court in *Oklahoma Press*, *Morton Salt* and *Crafts* clearly indicate that probable cause for an investigation is not required. In our judgment, the District Court erred in imposing a condition on the exercise of the right granted by Congress to the Secretary to make an investigation.

It is next contended that the subpoenas duces tecum were too broad. In substance, they required production of records containing basic information or data on matters required to be reported from which the organizational reports (Form LM-1) and the financial reports (Form LM-2) filed with the Secretary by the unions may be verified, explained or clarified and checked for accuracy and completeness. These were the records which the statute required the

unions to keep and were quasi-public records. Production of the records could not be resisted on the ground of self-incrimination. *Shapiro* v. *United States*, 335 U. S. 1; *Wilson* v. *United States*, 221 U. S. 361; *United States* v. *Pulford*, 155 F. 2d 944 (CA 6); *Rodgers* v. *United States*, 138 F. 2d 992 (CA 6). The unions asserted no such ground. In our opinion, it was not unreasonable to compel production of records which the law required to be kept and from which the reports filed with the Secretary were made. In no other way could the Secretary verify the reports than by examination of the records. These records were relevant to the inquiry because they would throw light on whether the reports filed by the unions with the Secretary spoke the truth. The District Court, however, had the power to impose protective restraints on the conduct of the investigation to relieve against oppression or other illegal conduct. *Hunt Foods & Industries, Inc.* v. *Federal Trade Commission*, 286 F. 2d 803, 811. (CA 9) cert. denied 365 U. S. 877. This power was not invoked by the unions. They questioned the right of the Secretary to make the investigation.

Oklahoma Press involved a corporation. It is urged that a different rule should apply to labor unions. We think not. In *United States* v. *White*, 322 U. S. 694 a subpoena duces tecum issued by the District Court requiring a union to produce its records before a Grand Jury was resisted by a union officer on the ground that they might tend to incriminate the union or himself individually or as such officer. The Supreme Court held that this defense was not available. While White involved the Fifth Amendment, the opinion of the Court contains language which is pertinent here. The Court said:

> The fact that the state charters corporations and has visitorial powers over them provides a convenient vehicle for justification of governmental investigation of corporate books and records. *Hale* v. *Henkel*, supra; *Wilson* v. *United States*, supra. But the absence of that fact as to a particular type of organization does

> not lessen the public necessity for making reasonable regulations of its activities effective, nor does it confer upon such an organization the purely personal privilege against self-incrimination. Basically, the power to compel the production of the records of any organization, whether it be incorporated or not, arises out of the inherent and necessary power of the federal and state governments to enforce their laws, with the privilege against self-incrimination being limited to its historic function of protecting only the natural individual from compulsory incrimination through his own testimony or personal records.

The Court concluded:

> The union and its officers acting in their official capacity lack the privilege at all times of insulating the union's books and records against reasonable demands of governmental authorities.

Finally, the unions contend that Section 201 of the Act (29 U. S. C. § 431), containing the provisions requiring them to file reports with the Secretary, is unconstitutional in violation of the Commerce Clause, Article I Section 8. This contention was not passed upon by the District Court. The unions claim that the Secretary's authority to investigate is dependent upon Section 201 of the Act, and, therefore, such Section is subject to challenge in this case.

The unions concede (Brief p. 19) that Congress has the power to regulate collective bargaining activities affecting interstate commerce. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1. They admit (Brief p. 22) that the Section would be constitutionally supportable if the reporting requirements were limited to the filing of collective bargaining agreements, reporting strike vote procedures, hiring hall practices and the like. They insist, however, that the Section contains general reporting provisions and is an attempt by Congress, using its conceded power, to legislate with respect to all of the internal affairs of the unions, which are purely local in character. They argue

that if this legislation is sustained it will obliterate any meaningful distinction between federal and state authority.

The trouble with this contention is that the collective bargaining procedures and the like, which admittedly may be regulated, are not the only union activities which substantially affect interstate commerce.

Congress has made detailed findings, based on extensive investigations, which were adopted as part of the Act (29 U. S. C. § 401). These findings, in substance, were "that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation"; that the Federal Government has a responsibility to protect the rights of the employees; that in order to accomplish the free flow of commerce, it is necessary that labor organizations, employers and their officials maintain the highest standards of responsibility and ethical conduct in the handling of their affairs particularly as they affect labor-management relations. Congress found from its recent investigations that these high standards had not been maintained but were breached and disregarded; that it was necessary to pass the Act to eliminate or prevent improper practices which defeated the policy of the Labor-Management Relations Act of 1947, as amended, and burdened and obstructed commerce.

These findings of Congress are binding on the courts. As recently stated by the Supreme Court in *Communist Party of the United States of America* v. *Subversive Activities Control Board*, U. S. , decided June 5, 1961:

> It is not for the courts to re-examine the validity of these legislative findings and reject them. See *Harisiades* v. *Shaughnessy*, 342 U. S. 580, 590. They are the product of extensive investigation by Committees of Congress over more than a decade and a half. Cf. *Nebbia* v. *New York*, 291 U. S. 502, 516, 530. We certainly cannot dismiss them as unfounded or irrational imaginings. See *Galvan* v. *Press*, 347 U. S. 522, 529;

American Communications Assn. v. *Douds,* 339 U. S. 382, 388-389....

Where, as here, the activities have a substantial effect on interstate commerce, it is not an objection that they are local in character. *United States* v. *Darby,* 312 U. S. 100; *Wickard* v. *Filburn,* 317 U. S. 111.

The Commerce Clause does not inhibit Congress in selecting the means deemed necessary for bringing out the desired conditions in the channels of interstate commerce. *American Power & Light Co.* v. *S. E. C.,* 329 U. S. 90, 100.

In our opinion, Section 201 of the Act does not offend against the Commerce Clause.

The judgment of the District Court is reversed and the cause remanded with instructions to grant the petition for enforcement of the subpoenas.

APPENDIX B

No. 14533

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ARTHUR J. GOLDBERG, Secretary of Labor, United States Department of Labor, *Petitioner-Appellant*,

v.

TRUCK DRIVERS LOCAL UNION No. 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, and GENERAL DRIVERS, WAREHOUSEMEN, HELPERS, AND GAS STATION ATTENDANTS LOCAL UNION No. 614, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, *Respondents-Appellees*.

On Appeal from the United States District Court for the Eastern District of Michigan, Southern Division.

Judgment

August 16, 1961

THIS CAUSE came on to be heard on the transcript of the record from the U. S. District Court for the Eastern District of Michigan, Southern Division, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed and the cause remanded with instructions to grant the petition for enforcement of the subpoenas.

APPROVED FOR ENTRY:

(s) PAUL C. WEICK
U. S. Circuit Judge

APPENDIX C

Filed Sep 12 1961

No. 14,533

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ARTHUR J. GOLDBERG, Secretary of Labor, United States Department of Labor, *Petitioner-Appellant,*

v.

TRUCK DRIVERS LOCAL UNION NO. 299, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, and GENERAL DRIVERS, WAREHOUSEMEN, HELPER, AND GAS STATION ATTENDANTS LOCAL UNION NO. 614, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS AND HELPERS OF AMERICA, *Respondents-Appellees.*

Order

Before: CECIL, WEICK and O'SULLIVAN, *Circuit Judges.*

Upon consideration,

IT IS ORDERED that the petition for rehearing be denied.

PAUL C. WEICK
United States Circuit Judge

APPENDIX D

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
BUREAU OF LABOR-MANAGEMENT REPORTS

SUBPOENA DUCES TECUM

TO: Truck Drivers, Local 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers (Officer in Charge of Records), 2741 Trumbull Avenue, Detroit 16, Michigan.

At the instance of the Commissioner, Bureau of Labor-Management Reports, Department of Labor, you are hereby required to appear before Mr. V. L. G. Matelis, an officer of the Bureau of Labor-Management Reports, Department of Labor, at 2741 Trumbull Avenue, Detroit, Michigan, in the City of Detroit, Michigan, on the 28th day of September, 1960, at 10:00 o'clock a.m. of that day, to testify in the Matter of an investigation by the Bureau of Labor-Management Reports, involving a determination whether any person has violated or is about to violate any provision of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401 et seq., except Title I or amendments made by the Act to other Statutes.

And you are hereby required to bring with you and produce at said time and place the following books, papers and documents:

> All records for the period from January 1, 1959 to the present date maintained by you or under your control which contain any basic information or data on matters required to be reported from which the organizational report (Form LM-1), and the financial report (Form LM-2) filed with the Secretary of Labor for Local 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, may be verified, explained or clarified and checked for accuracy and completeness, in connection with all

items referred to or listed in such report, and all items omitted or excluded therefrom which are relevant thereto and are required to be included in said reports, such records to include but not be limited to, vouchers, worksheets, ledgers, audit reports, records of receipt of dues, fees, assessments, fines and work permits, accounts receivable, accounts payable, journals, journal vouchers, check register, payroll register and related records, and all books of accounts of Truck Drivers, Local 299, related to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or other local unions affiliated with said International, including all bank statements, canceled checks, check stubs, audit reports, financial reports, records of loans, records of mortgages, records of ownership of property real and personal, deeds, records of trust, records of investments, and all correspondence and memoranda pertaining to receipts and disbursements.

In testimony whereof, the Seal of the Department of Labor is affixed hereto and undersigned, the Commissioner, Bureau of Labor-Management Reports of said Department of Labor, has hereunto set his hand at Washington, D. C. this 19th day of September, 1960.

Signed: John L. Holcombe, the Seal of the Department of Labor appearing thereon, with the instruction; Fail Not at Your Peril.

APPENDIX E

UNITED STATES OF AMERICA

DEPARTMENT OF LABOR

BUREAU OF LABOR-MANAGEMENT REPORTS

SUBPENA DUCES TECUM

TO: General Drivers, Warehousemen, Helpers and Gas Station Attendants, Local Union No. 614, Teamsters, (Officer in Charge of Records), 1410 S. Telegraph, Pontiac, Michigan.

At the instance of the Commissioner, Bureau of Labor-Management Reports, Department of Labor, you are hereby required to appear before Jack Stump, an officer of the Bureau of Labor-Management Reports, Department of Labor, at the offices of Local Union No. 614, 1410 South Telegraph, in the City of Pontiac, Michigan, on the 5th day of September, 1960, at 10 o'clock a.m. of that day, to testify in the Matter of an investigation by the Bureau of Labor-Management Reports involving a determination whether any person has violated or is about to violate any provision of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401 et seq., except Title I or amendments made by the Act to other Statutes.

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents: All records for the period from January 1, 1959 to the present date maintained by you or under your control which contain any basic information or data on matters required to be reported from which the organizational report (Form LM-1), and the financial report (Form LM-2) filed with the Secretary of Labor for Local 614, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America may be verified, explained or clarified and checked for accuracy and completeness, in connection with all items referred to or listed in such report and all items omitted or excluded therefrom

which are relevant thereto and are required to be included in said reports, such records to include but not be limited to, vouchers, worksheets, ledgers, audit reports, records of receipt of dues, fees, assessments, fines and work permits, accounts receivable, accounts payable, journals, journal vouchers, check register, payroll register and related records, and all books of accounts of Local 614, related to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or other local unions affiliated with said International, including all bank statements, cancelled checks, check stubs, audit reports, financial reports, records of loans, records of mortgages, records of ownership of property real and personal, deeds, records of trusts, records of investments, and all correspondence and memoranda pertaining to receipts and disbursements.

In testimony whereof, the seal of the Department of Labor is affixed hereto, and the undersigned, the Commissioner, Bureau of Labor-Management Reports of said Department of Labor, has hereunto set his hand at Washington, D. C., this 19th day of September, 1960.

(s) JOHN L. HOLCOMBE.

Fail Not at Your Peril

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 15783-809, 15814, 15838, 15857, 15860, 15879-80, 15901-02, 15904, 15911, 15917, 15920-22, 15938, 15947, 15982-83

MONTSHIP LINES, LIMITED, ET AL., PETITIONERS

v.

FEDERAL MARITIME BOARD and THE UNITED STATES OF AMERICA, RESPONDENTS

On Petitions to Review an Order of the Federal Maritime Board

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Decided June 30, 1961

Mr. Burton H. White, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of Court, who was on the brief for petitioners in cases numbered 15808, 15814, 15901, 15902, 15904, 15938, 15947, 15982 and 15983, and intervenors in case numbered 15802, argued for all petitioners except petitioners in cases numbered 15879, 15880 and 15917.

Mr. Elmer C. Maddy, with whom *Mr. Ronald A. Capone* was on the brief, for petitioners in cases numbered 15801 and 15838, argued for all petitioners.

Mr. Leonard G. James, of the bar of the Supreme Court of California, *pro hac vice*, by special leave of Court, for petitioners in cases numbered 15802, 15879, 15880 and 15917. *Mr. Charles F. Warren* also entered an appearance for petitioners in cases numbered 15802, 15879

and 15880, and intervenor Wegal A.B. (Totem Line) in case numbered 15802.

Mr Russell B. Pace, Jr., with whom *Mr. Arthur J. Phelan* was on the brief for petitioners in cases numbered 15800, 15802, 15803, 15809, 15857, 15904, 15938, 15947, 15982 and 15983, and for intervenors in case numbered 15802. *Mr. Frederick M. Bradley* also entered an appearance for petitioners in cases numbered 15800 and 15803. *Mr. Charles W. Halleck* also entered an appearance for petitioners in case numbered 15809.

Mr. Morton Zuckerman, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of Court, with whom *Mr. Morton Lifton* was on the brief, for petitioners in cases numbered 15804, 15805, 15920 and 15921.

Mr. Edward Aptaker, Assistant General Counsel, Federal Maritime Board, with whom *Messrs. James L. Pimper*, General Counsel, Federal Maritime Board, and *Robert E. Mitchell*, Assistant General Counsel, Federal Maritime Board, were on the brief, for respondent Federal Maritime Board.

Mr. Richard A. Solomon, Attorney, Department of Justice, for respondent United States of America.

Mr. Morton Lifton was on the brief for petitioners in cases numbered 15783 through 15798, and 15922.

Mr. Harry A. Inman was on the brief for petitioners in cases numbered 15799 and 15860.

Messrs. Elkan Turk and *Elkan Turk, Jr.*, were on the brief for petitioners in cases numbered 15806 and 15911.

Messrs. J. Joseph Noble and *Roy Leifflen* were on the brief for petitioners in case numbered 15807.

Mr. Arthur E. Tarantino entered an appearance for petitioners in cases numbered 15802, 15808, 15814, 15901, 15902 and 15947.

Before PRETTYMAN, BAZELON and WASHINGTON, Circuit Judges.

BAZELON, *Circuit Judge*: Pursuant to the Judicial Review Act of 1950, 5 U.S.C. §§ 1031-1042 (1958), one hundred and eighty-three alien corporations engaged in the common carriage of cargo and passengers by water between the United States and foreign countries[1] bring these petitions to review an order of the Federal Maritime Board entered April 11, 1960, under § 21[2] of the Shipping Act of 1916.[3] This order requires every com-

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[1] In addition there are five petitioners which are domestic corporations and two petitioners which contend that as of the date of the Board's order they were not engaged in the common carriage of cargo or passengers between the United States and foreign countries.

[2] Section 21, 46 U.S.C. § 820 (1958), provides:

> "The Federal Maritime Board and the Secretary of Commerce may require any common carrier by water, or other person subject to this chapter, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it or him any periodical or special report, or any account, record, rate, or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this chapter. Such report, account, record, rate, charge, or memorandum shall be under oath whenever the Board or Secretary so requires, and shall be furnished in the form and within the time prescribed by the Board or Secretary. Whoever fails to file any report, account, record, rate, charge, or memorandum as required by this section shall forfeit to the United States the sum of $100 for each day of such default.
>
> "Whoever willfully falsifies, destroys, mutilates, or alters any such report, account, record, rate, charge, or memorandum, or willfully files a false report, account, record, rate, charge, or memorandum shall be guilty of a misdemeanor, and subject upon conviction to a fine of not more than $1,000, or imprisonment for not more than one year, or to both such fine and imprisonment."

mon carrier by water subject to the Act to file "a list identifying every contract, agreement or understanding, involving the water-borne commerce of the United States," which was in effect as of January 1, 1960, between the carrier and "any other common carrier by water . . . or with any freight forwarder, terminal operator, stevedore, or ship's agent . . . which related or pertained to" seven specified subjects.[3] In addition, each carrier was required to file with the Board copies of every such agreement not previously filed. The carriers were required to certify under oath that the documents submitted were true and complete records of the agreements called for.

The petitioners filed motions for reconsideration of the Board's order. In each instance the Board denied these motions on the merits without hearing. The orders denying these motions are also before us on review.

Petitioners and respondents join issue on a number of matters. We shall deal first with those questions pertaining to our jurisdiction to review the Board's § 21 order. Then we shall consider the general issues affecting all petitioners. Finally we shall turn to the special issues which are raised by and which affect only certain of the petitioners.

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[3] For the full text of the Board's order, see Appendix.

I. JURISDICTION

A. Effect of 28 U.S.C. § 2112

On June 8, 1960, the first of the instant petitions to review the Board's § 21 order were filed in this court. On the same date a similar petition was filed by States Marine Lines in the United States Court of Appeals for the Second Circuit. Two days later another petition was filed in the Second Circuit by Kerr S.S. Co.

A certified index of the record was filed in this court on October 3, 1960. This is equivalent to filing of the record itself, under 28 U.S.C. § 2112(a). We are advised that neither the record nor any index of the record was at any time filed in the Second Circuit. On October 31, 1960, the Second Circuit upheld the Board's order and denied Kerr's petition. *Kerr S.S. Co. v. United States*, 284 F.2d 61. The question initially presented is whether in light of the applicable statutory provisions the Second Circuit's action precludes our review.

Section 1036 of Title 5, U.S.C. (1958), provides in part:

> . . . the agency shall file in the office of the clerk of the court of appeals in which the proceeding is pending the record on review, as provided in section 2112 of Title 28.

Section 2112(a) of Title 28 provides in part:

> . . . If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency . . . concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may

> thereafter transfer all the proceedings with respect to such order to any other court of appeals.

It is clear, in light of these statutory provisions that we have jurisdiction. The mere fact that petitions for review of the same order were filed in the Second Circuit and that that court has already upheld the order does not oust this court of jurisdiction. The question whether the Second Circuit had jurisdiction to decide *Kerr* in light of 28 U.S.C. § 2112(a) and 5 U.S.C. § 1039(a) (1958)[4] is not before us.

B. Timeliness of Certain Petitions to Review

Section 4 of the Review Act, 5 U.S.C. § 1034 (1958), provides in part:

> Any party aggrieved by a final order reviewable under this chapter may, within sixty days after entry of such order, file in the court of appeals . . . a petition to review such order.

Eleven of the petitioners[5] sought judicial review of the

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[4] This section provides:

> "Upon the filing and service of a petition to review, the court of appeals shall have jurisdiction of the proceeding. The court of appeals in which the record on review is filed, on such filing, shall have jurisdiction to vacate stay orders or interlocutory injunctions theretofore granted by any court, and shall have exclusive jurisdiction to make and enter, upon the petition, evidence, and proceedings set forth in the record on review, a judgment determining the validity of, and enjoining, setting aside, or suspending, in whole or in part, the order of the agency."

[5] Compania Anonima Venezolana de Navegacion; Pacific Shipowners, Ltd.; Orient Mid-East Lines, Inc.; Jugoslavenska Linijska Plovidba; Splosna Plovba; Navigazione Alta Italia, S.p.A.; Societa Italiana di Armemento "Sidarma"; Black Star Lines, Ltd.; Compania Colombiana de Navegazion Maritima, Ltd.; Compania Maritima Orlanda, S.A.; Marina Mercante Nicaraguense, S.A.

order of April 11 more than sixty days after the order was served, but within sixty days after the Board acted upon their motions for reconsideration of that order. The Maritime Board asserts that these petitions to review are untimely and seeks their dismissal. We think it clear, however, that the petitions in question were timely filed under our decision in *Outland* v. *Civil Aeronautics Board*, —— U.S. App. D.C. ——, 284 F.2d 224 (1960), where we held that the statutory sixty-day period for seeking judicial review of Civil Aeronautics Board orders did not commence until the Board acted upon Outland's motion for rehearing.[6]

The Maritime Board urges, however, that *Outland* is inapplicable since none of the motions for reconsideration we discuss were filed with the Board within the thirty-day period provided by Rule 16 of its Rules of Practice and Procedure. But we agree with petitioners that the Board's consideration of these motions on their merits constituted a waiver of the Board's own limitation period. Cf. *Bowman* v. *Loperena*, 311 U.S. 262 (1940); *City of Pittsburgh* v. *Federal Power Comm'n*, 99 U.S. App. D.C. 113, 237 F.2d 741 (1956). Although a court's or agency's consideration of an untimely motion for rehearing or reconsideration may not constitute a waiver of a limitation period fixed by Congress,[7] we think the rule is otherwise when the limitation period is imposed by the agency.

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[6] The controlling statute in the *Outland* case, 49 U.S.C. § 1486(a) (1958), provides that "any order . . . issued by the Board . . . shall be subject to review . . . upon petition, filed within sixty days after the entry of such order. . . ."

[7] Cf. *Safeway Stores* v. *Coe*, 78 U.S. App. D.C. 19, 136 F.2d 771 (1943).

C. Intervention

Section 8 of the Review Act, 5 U.S.C. § 1038 (1958), provides in part:

> . . . any party or parties in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto of their own motion and as of right, and be represented by counsel in any proceeding to review such order. Communities, associations, corporations, firms, and individuals, whose interests are affected by the agency's order, may intervene in any proceeding to review such order.

A number of the carriers subject to the Board's order filed notices of intention to intervene[8] or motions for leave to intervene in the instant review proceedings. Most of them also filed petitions to review which we hold above to be timely.[9] But four of the carriers seeking intervention did not file petitions to review.[10]

Assuming *arguendo* that these four are not "parties in interest in the proceeding before the agency" as is required for intervention as a matter of right, it is clear that they are parties "whose interests are affected by the agency's order" and we have discretion under the statute to permit intervention. Allowing these carriers to intervene would not in any appreciable way further complicate this litigation. The Board has not shown that it will be prejudiced by intervention, and the questions raised by

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[8] For our present purposes, we treat the notices of intention to intervene as motions for leave to intervene.

[9] We dismiss as moot the motions for leave to intervene filed by carriers which also filed petitions to review held timely herein.

[10] Americana Shipping Corp.; Kvarnerska Plovidba; Wegal A.B. (Totem Line); Skibsaktieselskapet Solstad.

the intervenors are identical to those raised in the cases in which intervention is sought. The motions for leave to intervene will, therefore, be granted.

II. GENERAL ISSUES

A. Authority under Section 21

Petitioners advance three contentions as to why the instant order falls outside the authority conferred on the Board by § 21 of the Shipping Act. They argue: (1) § 21 does not cover "contracts, agreements, and understandings"; (2) § 21 is limited to obtaining information relevant to the Board's "regulatory" power over carriers' rates under §§ 17 and 18; and (3) § 21 does not authorize the Board to compel the production of documents located outside the territorial confines of the United States.

Petitioners' first contention is properly answered in *Kerr*: namely, that, although § 21 does not expressly speak of "contracts, agreements or understandings," it is clear that such papers are encompassed within the broad language of the section which requires carriers and other persons subject to the Act to file "any account, record, rate, or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this chapter." Mutual dealings between parties culminating in consensual arrangements are clearly "transactions." And the writings evidencing the arrangements arrived at are just as clearly "memoranda." Therefore, the instant order falls within the scope of § 21.

Petitioners present an elaborate argument based upon the legislative history of § 21. They contend that section is modeled upon § 20 of the Interstate Commerce Act, 34 Stat. 594 (1906), and that a year before the enactment of the Shipping Act the Supreme Court in *United States* v. *Louisville & N. R.R.*, 236 U.S. 318 (1915), limited the similar language of § 20 to cover only accounting and

bookkeeping records. Assuming *arguendo* that petitioners' claims are correct, there is good reason why they should not be followed and why § 21 should not be given a similarly restrictive meaning. In *Louisville* the Interstate Commerce Commission had attempted to inspect the railroad's correspondence under § 20. Had the Supreme Court upheld the Commission's authorization to do so under § 20, it would have been forced to resolve the question whether such inspection constituted an unreasonable search and seizure. Under the Court's then view of the Fourth Amendment's limitation on the compulsory production of corporate records and documents—a view no longer followed, compare *Federal Trade Comm'n* v. *American Tobacco Co.*, 264 U.S. 298 (1924), with *Oklahoma Press Pub. Co.* v. *Walling*, 327 U.S. 186 (1946); and *United States* v. *Morton Salt Co.*, 338 U.S. 632 (1950)—the Court would probably have had to answer that question in the affirmative. Because the prevailing views on the constitutional question led to a restrictive reading of § 20 of the Interstate Commerce Act in 1915 does not seem to us to justify a simiarly restrictive reading of § 21 of the Shipping Act today when those views are no longer followed.

In addition it should be noted that in *Louisville* the Supreme Court defined "records" as used in § 20 of the Interstate Commerce Act to include "the written evidence of [a corporation's] . . . contracts and business transactions."[11] Section 21 of the Shipping Act also speaks of "records," and consequently the *Louisville* case may be read as supporting the Board's authority under that section.

Petitioners' second contention is that § 21 is limited to enabling the Board to obtain information relevant to carrying out its supervisory power over carriers' rates under

[11] 236 U.S. at 334.

§§ 17 and 18 and is therefore inapplicable where the Board is seeking information to determine whether the prohibitions of §§ 14-16 are being complied with. We find no basis in the Shipping Act for this bifurcation of the Board's authority. Furthermore, petitioners' claim would appear to be laid at rest by the Supreme Court's description of § 21 in *Isbrandtsen-Moller Co.* v. *United States*, 300 U.S. 139, 144-45 (1937):

> The purpose of §/21 is not far to seek. Other sections forbid allowance of rebates, require the filing of agreements fixing or regulating rates, granting special rates, accommodations or privileges, which may be disapproved, cancelled or modified if the board finds them unjustly discriminatory or violative of the act, prohibit undue or unreasonable preferences or the cutting of established rates and unjust discrimination between shippers or ports. To enable it to perform its functions the board may well need such information as that which the section gives it power to demand.

This quotation refers to the Board's responsibilities under §§ 14-16 as well as §§ 17 and 18. It is apparent that § 21 is not to be restricted to what petitioners characterize as the "regulatory" as opposed to the "enforcement" sections of the Act.

Petitioners finally contend that, since § 21 does not expressly authorize the Board to require the production of records or memoranda located outside the territorial confines of the United States, that power ought not to be implied. In support of this argument, they point to § 27 of the Shipping Act, 46 U.S.C. § 826 (1958), under which the Board "for the purpose of investigating alleged violations" may subpoena witnesses or documents "from any place in the United States at any designated place of hearing." Petitioners contend this restriction should be read into § 21. We think not.

It is questionable whether the Board is in fact powerless under § 27 to subpoena documents outside the territorial

confines of the United States. Cf. *Securities & Exchange Comm'n* v. *Minas De Artemisa, S.A.*, 150 F. 2d 215 (9th Cir. 1945), in which a similar description of the Security and Exchange Commission's subpoena power under § 22(b) of the Securities Act of 1933 was held not to preclude the Commission from compelling persons within the United States to produce documents of foreign corporations situated outside this country.

In any event, in light of the coverage and the purposes of the Shipping Act, we can see no reason to restrict § 21 to cover only information within the United States. In enacting the Shipping Act, which deals with foreign as well as interstate commerce, Congress was clearly mindful of the fact that foreign flag as well as United States carriers were subject to regulation thereunder. See H.R. Rep. No. 659, 64th Cong., 1st Sess. (1916). If the Board's investigatory powers were limited to the territorial confines of the United States, regulation of foreign flag carriers would be hampered to a substantial degree. Consequently, we will not read into § 21 a territorial limitation which appears to be contrary to the purposes of the Shipping Act.

We must reject petitioners' contentions regarding protests of foreign governments and extra-territorial enforcement of the Board's order. As the Second Circuit pointed out in *Kerr*, the protests of foreign governments are matters for consideration by the Executive and not the courts. And the question as to whether the order can be enforced by extra-territorial means is not presently before us. All that is here involved is whether the order was properly and validly issued.

B. Notice of Proposed Issuance of a Section 21 Order

Petitioners next contend that because the § 21 order is industry-wide in application it is analogous to rule-making and the Board was required to give notice of the proposed issuance of the order to interested parties so they could

submit their views and arguments. Clearly the order is not legislative in character. In any event, notice and hearing are not prerequisite to the issuance of such an order directed to a single carrier. *Isbrandtsen-Moller Co.* v. *United States, supra.* That the Board chose in this instance as a matter of convenience to issue one order directed to many carriers rather than to issue many orders each directed to a single carrier does not convert the instant order into the promulgation of a rule.

C. The Fourth Amendment

The Board's order does not state the purpose for which the information is demanded. For this reason, among others, petitioners contend that the order violates the Fourth Amendment.[12]

Although earlier limitations on the investigatory powers of administrative agencies have been relaxed in recent years,[13] the Supreme Court has informed us that "a governmental investigation into corporate matters may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power. . . . But it is sufficient if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant. 'The gist of the protection is in the requirement, expressed in terms, that the disclosure sought shall not be unreason-

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[12] Although this matter was argued in the briefs in the *Kerr* case, the Second Circuit's opinion does not appear to resolve this issue. We note that the court's opinion does not appear to state the purpose of the Board's order:

> "It does not appear that any of the petitioners tried to show what was the financial burden of listing and copying the contracts in question, or that it was out of all reasonable proportion to *any purpose that the proposed investigation might have.*" 284 F.2d at 64, emphasis supplied.

[13] See *Oklahoma Press Pub. Co.* v. *Walling*, 327 U.S. 186 (1946).

able.' *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186, 208." *United States* v. *Morton Salt Co.*, 338 U.S. 632, 652-53 (1950).

What is "reasonably relevant" depends on the purpose and nature of the investigation undertaken by the agency. "[R]elevancy and adequacy or excess in the breadth of the subpoena are matters variable in relation to the nature, purposes and scope of the inquiry." *Oklahoma Press Pub. Co.* v. *Walling*, 327 U.S. 186, 209 (1946). And as Professor Davis has pointed out, "the breadth of a subpena or of a search made in records may be excessive, but the test is relevance to the specific purpose, and the purpose is determined by the investigators." 1 DAVIS, ADMINISTRATIVE LAW TREATISE § 3.06 (1958). Consequently, the Board's failure in the instant case to state its purpose in requiring the information demanded precluded a determination of relevancy.

Respondents, relying on *Morton Salt*, contend that no detailed specification of purpose is necessary when an agency is investigating "merely on suspicion that the law is being violated, or even because it wants assurance that it is not." [14] If this order is pursuant to such an investigation, a matter which the Board contends in its brief but which does not appear from the face of the order, it might be argued that a *detailed* specification at this stage of "initial inquiry" may not be feasibly required. Whatever may be the validity of that argument, we think it cannot excuse the absence of any indication whatsoever, as in the instant order, of the investigation's purpose since no basis is thereby afforded for determining the relevancy of the information demanded. And just as the reasons underlying agency action must appear from the agency's order, so too we think that the statement of purpose must be apparent from the order itself and cannot be supplied by contentions in the briefs.

[14] 338 U.S. at 642-43.

In any event, the language in *Morton Salt* upon which the Government relies was not directed to the matter of purpose and relevancy, but rather to the issue of whether the Federal Trade Commission had power to compel reports absent "probable cause" to believe that the law was being violated.

The Government also points to *Isbrandtsen-Moller Co. v. United States, supra;* and *Bowles v. Northwest Poultry & Dairy Products Co.*, 153 F. 2d 32 (9th Cir. 1946), for the proposition that statements of purpose are unnecessary. In *Isbrandtsen-Moller* which, like the instant case, involved an investigatory order pursuant to § 21 of the Shipping Act, the order recited:

> It appearing, That full and complete information as to the rates and charges for or in connection with the transportation of certain property from continental United States to points in foreign countries by carriers by water in foreign commerce subject to the Shipping Act, 1916, is necessary to the proper administration of the regulatory provisions of said act . . . .[15]

This order, stating the subject of the investigation to be rates and charges, provided a standard for determining the relevancy of the documents demanded. Similarly, the order involved in *Northwest Poultry* contained a sufficient statement of purpose and relevancy since the records there required were needed in order to determine whether the corporation had complied with a particular Regional Price Order under the Emergency Price Control Act.

Since the reasonableness of the order under review is dependent upon the relevancy of the information demanded, and that cannot be determined in the absence of a statement of purpose, the order is fatally defective. Because petitioners' contentions regarding the breadth and the vagueness of the order are in part dependent upon the

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[15] *Isbrandtsen-Moller Co. v. United States*, 14 F. Supp. 407, 408 (S.D.N.Y. 1936).

question of relevancy, we find it unnecessary to presently deal with them. The order under review is vacated and the case remanded to the Board for proceedings not inconsistent with this opinion.

III. SPECIAL ISSUES

A. Local Foreign Law Prohibiting Disclosure

Several petitioners,[16] foreign steamship lines of Yugoslavia and Netherlands nationality assert that the production by them of documents required by the Board's § 21 order would be violative of their local national law. They point to provisions of the Yugoslav Criminal Code and the Netherlands Economic Competition Law which they contend preclude compliance with the Board's order.

Prior to determining whether these foreign laws do in fact forbid the production of documents such as those required by the Board's order and, if so, what effect this should have upon compliance, the appropriate procedure is to require these petitioners to make a good faith attempt to obtain a waiver of such restrictions from their respective governments. *United States* v. *Standard Oil Co. (N.J.)*., 23 F.R.D. 1 (S.D.N.Y. 1958); *Societe Internationate, etc.* v. *McGranery*, 111 F. Supp. 435 (D.D.C. 1953), *affirmed sub nom. Societe Internationale, etc.* v. *Brownell*, 96 U.S. App. D.C. 232, 225 F. 2d 532 (1955), *cert. denied*, 350 U.S. 937 (1956); *Societe Internationale, etc.* v. *Brownell*, 100 U.S. App. D.C. 148, 243 F. 2d 254 (1957), *reversed and remanded sub nom. Societe Internationale, etc.* v. *Rogers*, 357 U.S. 197 (1958).

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[16] Koninklijke Nederlandsche Stoomboot Maatschappij, N.V.; N.V. Stoomvaart Maatschappij "Nederland"; Koninklijke Rotterdamsche Lloyd, N.V.; N.V. Nederlandsch-Amerikaansche Stoomvart Maatschappij ("Holland Amerika Lijn"); Nederlandsche Stoomvart Maatschappij "Oceaan," N.V.; Oranje Lijn (Maatschappij Zeetransport), N.V.; Jugoslacenska Linijska Plovidba; Splosna Plovba; Karenska Plovidba.

Consequently, these petitioners should upon the remand bring any arguments that their local law prohibits compliance before the Board so that it can then initially determine whether petitioners have made a good faith effort to secure waivers and, if so, whether compliance is to be required.

B. Jurisdiction Over Certain Petitioners

Two of the petitioners [17] contend that they are not subject to the order since on the date of that order neither of them was a common carrier by water engaged in the foreign commerce of the United States. One petitioner contends that it terminated all service with the United States in November 1959, while the other contends it terminated service in February 1960.

Assuming *arguendo* that these petitioners would not be subject to the Board's order if they had permanently terminated their service to or from the United States before April 11, 1960, this court has nothing before it to show such termination other than declarations of petitioners in their briefs. This clearly seems to be a matter upon which evidence should be taken to determine the nature and extent of the cessation of these petitioners' activities. Consequently, on remand these petitioners should bring their contentions before the Board so it can have the opportunity to pass upon this issue in the light of an adequate factual record which can be then made.

We consider it unnecessary to consider the other contentions raised by the petitioners at this time.

Order Vacated.

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[17] Prince Line Ltd.; Compania Espanola de Navegacion Maritima, S.A.

APPENDIX

Federal Maritime Board Order, April 11, 1960

"Section 21 Order — Contracts, Agreements and Understandings of Common Carriers by Water."

By virtue of the authority vested in it by section 21 of the Shipping Act, 1916 (46 U.S.C. 820), the Federal Maritime Board hereby orders every common carrier by water subject to said Act, including but without limitation, those named in Appendix A attached hereto and made part hereof, to file with it on or before July 15, 1960, the following:

1. A list identifying every contract, agreement or understanding, involving the water-borne commerce of the United States, which it has entered into with any other common carrier by water and or common carriers by water, and or with any freight forwarder, terminal operator, stevedore, or ship's agent which was in effect as of January 1, 1960, which relates or pertains to:

(a) the fixing or regulating of rates, fares, charges or practices for the loading, unloading, handling, transporting, storing, or delivering of property or passengers;

(b) the giving or receiving of special rates, fares, accommodations, or other special privileges or advantages;

(c) the controlling, regulating, preventing or destroying of competition;

(d) the pooling or apportioning of earnings, losses or traffic or the joint use of equipment or facilities;

(e) the allotting of ports or the restricting or otherwise regulating of the number and character of sailings between ports;

(f) the limiting of, or regulating of, in any way, the volume or character of freight or passenger traffic to

be carried or to be received, handled, stored or delivered;

(g) the providing for, in any manner, of an exclusive, preferential, or cooperative working arrangement.

Documents filed for approval under section 15 of said Act (46 U.S.C. 814) may be identified by citation of the Federal Maritime Board number assigned thereto, and documents filed in the past year in response to another order issued pursuant to said section 21 may be identified by stating the dates of such order and response; as to others, specify the effective date and the parties.

2. A copy of every contract, agreement, or understanding identified on said list, which has not been filed for approval under said section 15, and has not been filed with the Board in the past year in response to an order issued pursuant to said section 21. If any such contract, agreement, or understanding is oral, it shall be set forth in a memorandum in sufficient detail to represent a true and complete record of the contract, agreement, or understanding.

3. A statement, under oath, by a duly authorized officer of the carrier, that the records submitted in response to items 1 and 2 above are true and complete records of all contracts, agreements and understandings of the character or nature required to be filed by this Order, to which such carrier was a party as of January 1, 1960.

By the Federal Maritime Board.

Date: April 11, 1960

JAMES L. PIMPER,
Secretary.

APPENDIX G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil 20628

JAMES P. MITCHELL, Secretary of Labor, U. S. Department of Labor, *Defendant and Petitioner*,

v.

TRUCK DRIVERS LOCAL UNION NO. 299, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, an unincorporated association,

and

GENERAL DRIVERS, WAREHOUSEMEN, HELPERS AND GAS STATION ATTENDANTS LOCAL UNION NO. 614, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, an unincorporated association, *Plaintiffs and Respondents*.

Opinion

APPEARANCES:

GEORGE E. WOODS, JR.
United States Attorney

and

AARON A. CAGHAN,
Regional Attorney,
Department of Labor,
Attorneys for Petitioner

GEORGE S. FITZGERALD
HUGH HAFER
PAUL B. MAYRAND,
Attorneys for Respondents.

Proceedings on the issues here involved were first initiated in this court with the filing by Local Unions 299 and

614 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, of a complaint and request for temporary restraining order, to enjoin the Secretary of Labor and his duly delegated subordinates from enforcing compliance of certain subpoenas duces tecum allegedly issued pursuant to the Labor-Management Reporting and Disclosure Act. That cause was dismissed by stipulation of the parties because service was not and could not effectively be made on the Secretary of Labor from this jurisdiction.

The instant case was thereupon instituted by the Secretary of Labor, and this court then signed an order directing the respondents to show cause why subpoenas duces tecum issued by the United States Department of Labor on September 19, 1960 should not be enforced.

In the hearings before this court, together with arguments of respective counsel and through the briefs, pleadings and exhibits, the Secretary of Labor has never indicated that there was any complaint or charge either filed with or pending before him involving the respondents. Nor does the Secretary of Labor, or his duly authorized and delegated subordinates, indicate or intimate that there has been, could be, or do they have any reason to believe any violation of law has been committed or contemplated by the respondent unions.

Thus, in point of fact, this case can only be considered from the viewpoint that there is no reason for the issuance of the subpoenas duces tecum, aside from the mere desire of the Secretary of Labor to examine the books and records of the respondents under the claimed broad inquisitorial powers granted him by the Labor-Management Reporting and Disclosure Act of 1959, 29 USC 401 et seq., commonly called the Landrum-Griffin Bill.

More specifically the subpoenas duces tecum (addressed to each local) states that:

"At the instance of the COMMISSIONER, BUREAU OF LABOR-MANAGEMENT REPORTS, DEPARTMENT OF LABOR, you (the officer of the local) are hereby required to appear before (an officer of the Bureau named, together with the date, time and place) to testify In The Matter of *an investigation by the Bureau of Labor-Management Reports involving a determination whether any person has violated or is about to violate any provision of the Labor-Management Reporting and Disclosure Act of 1959*, 29 U.S.C. 401 et. seq., except Title I or amendments made by the Act to other Statutes."

The above portion of the subpoena duces tecum embodies certain portions of Section 601 of the Act (Section 521(a) USC Title 29) while the remaining portions of the subpoena duces tecum read as follows:

"And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents:

"All records for the period from January 1, 1959 to the present date maintained by you or under your control which contain any basic information or data on matters required to be reported from which the organizational report (Form LM-1), and the financial report (Form LM-2) filed with the Secretary of Labor for Local 614, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America may be verified, explained or clarified and checked for accuracy and completeness, in connection with all items referred to or listed in such report and all items omitted or excluded therefrom which are relevant thereto and are required to be included in said reports, such records to include but not be limited to, vouchers, worksheets, ledgers, audit reports, records of receipt of dues, fees, assessments, fines and work permits, accounts receivable, accounts payable, journals, journal vouchers, check register, payroll register and related records, and all books of accounts of Local 614, related to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or other local unions affiliated with said

> International, including all bank statements, cancelled checks, check stubs, audit reports, financial reports, records of loans, records of mortgages, records of ownership of property real and personal, deeds, records of trusts, records of investments, and all correspondence and memoranda pertaining to receipts and disbursements."

and embody the significant phrasing of Section 206 of the Act, Section 436 USC Title 29, having to do with retention of records by the unions for a five-year period.

The respondents resist the enforcement of the subpoena upon legal grounds. They urge this court to accept the applicable portions of *FTC* v. *American Tobacco*, 264 U.S. 298, and declare that these subpoenas are unenforceable as being too broad; that the respondents are voluntary associations and not corporations and therefore that the law pertaining to the amenability of corporations to administrative subpoenas are not applicable to them; that the interpretation of the Landrum-Griffin Act suggested by the Secretary of Labor is not in accordance with established legal principle or, conversely, that an interpretation which would require respondents to submit the material sought is an unconstitutional interference by Congress in the internal affairs of a union.

The government, depending upon the Landrum-Griffin Act, relies upon interpretation of *Oklahoma Press* v. *Walling*, 327 U.S. 186, and the cases cited therein; that the specific reference to the Federal Trade Commission by Congress, in Section 601(b) of this Act, indicates the intent of Congress to grant the inquisitorial powers sought to be enforced here; that Congress has the authority to grant to the Secretary sweeping subpoena power under the Act, and as being used here this subpoena power is within the purview of the Act.

The case of *FTC* v. *American Tobacco*, 264 U.S. 298, standing alone clearly indicates the position of the Ameri-

can Judiciary on the "broad shotgun" type of subpoena such as it under consideration here. We cannot cavalierly pass the intendments by Mr. Justice Holmes. The administrative fishing expedition, as well as the judicial, have formerly received condemnation. The following excerpts are in point and bear out the thoughts of this court:

> "Anyone who respects the spirit as well as the letter of the Fourth Amendment would be loath to believe that Congress intended to authorize one of its subordinate agencies to sweep all our traditions into the fire (Interstate Commerce Commission v. Brimson, 154 U.S. 447, 479), and to direct fishing expeditions into private papers on the possibility that they may disclose evidence of crime. * * * It is contrary to the first principles of justice to allow a search through all the respondents' records, relevant or irrelevant, in the hope that something will turn up. * * *
>
> "The right of access given by the statute is to documentary evidence—not to all documents, but to such documents as are evidence. The analogies of the law do not allow the party wanting evidence to call for all documents in order to see if they do not contain it. Some ground must be shown for supposing that the documents called for do contain it. Formerly in equity the ground must be found in admissions in the answer. *Wigram, Discovery*, 2d ed., § 293. We assume that the rule to be applied here is more liberal but still a ground must be laid and the ground and the demand must be reasonable. *Essgee Co.* v. *United States*, 262 U.S. 151, 156, 157. A general subpoena in the form of these petitions would be bad. Some evidence of the materiality of the papers demanded must be produced."

The problem next to be faced, however, is whether or not *American Tobacco*, supra, has been delimited by *Oklahoma Press*, supra, and therefore controlling in this cause. Obviously *Oklahoma Press*, in part at least, overshadows the broad language of *American Tobacco*. An analysis of the principles enunciated in *Oklahoma Press* is therefore

in order. The resistance to the subpoena in the latter case was based on the prohibitions of the Fourth and Fifth Amendments.

The arguments made in the *Oklahoma Press* concerning the Fifth Amendment to the United States Constitution are not applicable here. No such claim being made by these respondents and, in point of fact, such an argument would not "hold water" in light of the doctrines enunciated there and in *U. S.* v. *White*, 322 U.S. 694.

However the language used in *Oklahoma Press* concerning the "reasonableness" of the breadth of administrative subpoenas is clear. The protections of the Fourth Amendment have never been abandoned.

And it is obvious that Congress intended the judiciary to make an independent investigation concerning the possibility of the "fishing expedition", because as set forth in *Oklahoma* (page 209) concerning the limitations upon the administrative use of subpoena:

> "Necessarily, as has been said, this cannot be reduced to formula: for *relevancy and adequacy* (emphasis ours) *or excess in the breadth of the subpoena are matters variable in relation to the nature, purposes and scope of the inquiry.*"

Therefore, if the judiciary is to play any role, aside from that of an aide to the administrative or executive, it must make an independent determination of the basis or impelling motive of the investigation. In order to test the breadth of the subpoena there must or should be a standard by which to measure. Therefore, the court should be entitled to know or be advised of the scope of the inquiry. But, by hypothesis, as here, we have again nothing against which to measure and we are convinced that this is petitioner's intention. Conversely, petitioner urges that there need be no disclosure to permit the Secretary to obtain the records sought. The query then presents itself: how

can it be determined whether or not the subpoena can be tested for relevancy, adequacy, or excess in breadth. It is apparently the petitioner's contention that this need not be an essential. How then, without a focal point can the court determine relevancy.

If the words "when he deems it necessary" are to be given any meaning, then there must be some showing beyond the mere action of proceeding by the Secretary of Labor, i.e., the showing of necessity.

Respondents have further made the distinction that the *Oklahoma Press* case concerns corporations, and therefore is not applicable to labor unions. All cases and periodicals have described unions as voluntary associations and for the most part have dealt with labor unions as such entities. Even in *Landrum-Griffin* (*Section 605*) special provision is made for service of process upon unions, obviously enacted because of the unusual characteristics of voluntary associations. True, for some purposes, the union has been treated as a corporate entity. *U. S.* v. *White*, 322 U.S. 694. (However, the Fifth Amendment problems are not present here.) But there are recent cases which sharply point up the inter-relationship of the individual members with a voluntary association. *NAACP* v. *Alabama*, 357 U.S. 449.

In both of the above cases the United States Court held that the rights of the members of a voluntary association were so bound up with the rights and privileges of the voluntary association that it was declared to be an invasion of the personal rights and privileges of the individuals to require the association to deliver up its membership lists.

In the case at bar the subpoena is sufficiently broad to require the union to deliver up its membership lists (to check on dues paid) and the Secretary may, thereafter, at his discretion, deliver the information to the "interested parties" (part of Section 601(a)). Yet in the debates in

Congress involving the Landrum-Griffin Act, the membership lists were declared inviolate. Congress could never have intended that, by indirection, it policies could be overturned, since union dissidents, or persons seeking to destroy unions, through the unlimited discretion of an administrative officer, could obtain and disseminate such lists. Perhaps such an analogy may be extreme, yet again, what safeguards or standards do exist under the petitioner's theory?

This court should not by judicial legislation encourage the extension of the "fishing expedition" into the field of personal rights. Although the *Oklahoma* case, supra, may appear to have permitted the government to extend the subpoena privilege over that of personal freedom, Mr. Justice Murphy in his dissent to that case did call our attention to the probable consequences.

This court would be loath to extend any further the doctrines enunciated in the *Oklahoma Press* case. Corporations, perhaps, because they are artificial creatures, have fallen to the onslaught, but we note that the court there took great pains to emphasize and re-emphasize that the application of the principles set forth there should apply only to corporations. The voluntary association does have the elements of individual persons sufficiently so that the Fourth Amendment does give some protection, if we are to give any meaning to that Fourth Amendment. As set forth in Thomas M. Cooley's *Constitutional Limitations* (8th Ed. 1927), page 617:

> "The provisions prohibiting unreasonable searches and seizures 'should receive a liberal construction, so as to prevent stealthy encroachment upon or 'gradual depreciation' of the rights secured by them, by imperceptible practice of courts or by well-intentioned, but mistakenly overzealous executive officers.' (Case footnoted) But they should be so construed as to conserve public as well as individual rights." (Case footnoted)

We cannot close our eyes to the ever closing circle of what we have been pleased to call the right to reasonable privacy.

It was pointed out by the petitioner in his brief that the Teamsters Union is the object of this particular legislation. If so, the Act itself does not so state, nor would it be proper legislation. Thus, this court must take into consideration the portent of the Act in all its significance.

We do not conceive it to be justice to be oblivious to unreasonable subpoena powers and abandon any litigant to the whim and caprice of an administrative officer. The judiciary, in America at least cannot indulge itself with the luxury of the personal vendetta. The basis of our jurisprudence is "equal justice before the law" and any limitation emasculates the entire concept. All unions, or corporations, or individuals for that matter, are to receive the same treatment. There has been presented here no limitation upon the issuance of the broad subpoenas, nor has there been clearly demonstrated that applicable laws have so cut down the protections of this law, insofar as fishing expeditions are concerned, as to require the respondents to turn over all their records without a murmur. It has been said repeatedly that ours is not a government of men, but of laws.

The subpoenas by themselves are so broad that they constitute a complete seizure unrelated to any recorded purposeful investigation.

Comment should be made upon the requirement of Section 601 permitting the Secretary the right to issue an investigatorial subpoena whenever "he deems it necessary". This language certainly indicates that Congress intended that some showing be made on the question of necessity and it necessarily follows that there must be something upon which to base even an unreasonable declaration of the feeling of necessity by the Secretary.

If the courts cannot impose a limitation of some sort upon the unrestricted use of the subpoena power, the way would be open to unlimited harassment at the whim and caprice of the Executive, or by an administrative officer.

By this we do not mean that the Secretary of Labor cannot investigate, nor that he should cease investigating, or be alert to any violations as they occur or are about to occur, but the manner and means of the investigations should be strictly within legal means and not merely at his sole notion or fancy, or with the power allegedly urged here.

In this instant case the Department of Labor has refused to show, or has been unable to show, any basis for this investigation. This court feels that the requirement of when "he deems it necessary" (Section 601) has its foundation in some reason or purpose, rather than being an excuse for merely looking into the matters of union affairs, relevant or irrelevant, in the hope of something turning up, be it of any nature, without some reasonable foundation or valid purpose.

The interpretation sought by the government here would mean that at the whim of any administerial officer he could decide to exercise the strong arm of his power in an attempt to personally embarrass any union or union officer whom he might personally dislike. Furthermore, what is to prevent repetitious harassment? What are the standards?

This court feels that "necessity" means what it says, and here, where is the necessity? On what basis does the Secretary of Labor here "deem it necessary"?

There are other and further points well worth noting in the case at hand.

Section 201(c) Title II of the Labor-Management Reporting and Disclosure Act requires every labor organization to submit (its) reports to all of its membership, but

then requires any member (in the district court, if necessary) to show "just cause" to examine any books, records * * * etc. to verify such a report.

Thus, even a member whose interest in the Union is far greater and closer than that of the government, must show "just cause".

Section 206 of the Labor-Management Reporting and Disclosure Act requires that the union keep its books and records etc. for five years. This court is convinced this section was intended solely as a requirement and mandate that the records (upon which the report to the Secretary was based) be kept intact so that, should they be needed in any proper situation, they would be available. We cannot read into this section the argument that those records are for the Secretary's indiscriminate inspection without a showing of necessity.

Although this point is not specifically urged by the petitioner, the fact that the phrasing in the section is incorporated in part of the subpoenas duces decum, indicates that such borrowing of the phrasing might have some such implication.

Thus, this court is of the opinion that Section 601 is the only section applicable here.

Respondents have also raised the question of the Secretary subpoenaing books and records beyond the effective date of the Act. Since the above conclusions are dispositive of the basic issues here, it is not necessary to go into that point.

THEREFORE IT IS ORDERED that the petition for the order of compliance should be and hereby is denied.

FRED W. KAESS
United States District Judge

APPENDIX H

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Misc. No. 22-61

ARTHUR J. GOLDBERG, Secretary of Labor, *Petitioner*,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, etc.,
Respondent.

Memorandum

This matter came before the Court by way of a petition filed to compel the respondent to attend, testify and produce documentary evidence under the terms of the so-called Labor Management Reporting and Disclosure Act of 1959 (Act of September 14, 1959, 73 Stat. 519 et seq.; 29 U.S.C. 401 et seq.) The Court concludes that the subpoena should be enforced and it is so ordered. Order accordingly. *Goldberg* v. *Truck Drivers' Local Union No. 299, et al.*, U. S. Court of Appeals, 6th Cir., decided August 16, 1961 and cases therein cited. See also, *Oklahoma Press Co.* v. *Walling*, 327 U.S. 186; *United States* v. *Morton Salt Co.*, 338 U.S. 632. See also, generally, *Blair* v. *United States*, 250 U.S. 273, 282, 283. *Montship Lines, Limited, et al.* v. *Federal Maritime Board and U.S.A.*, U. S. Court of Appeals D.C. Cir., No. 15783-809, et al., decided June 30, 1961, is not to the contrary.

/s/ MATTHEW F. McGUIRE
Matthew F. McGuire
United States District Judge

October 5, 1961